



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

VIA FIRST CLASS MAIL

DEC 2 2 2004

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005

RE: MUR 5628
John Cavanagh

Dear Mr. Gross:

On December 15, 2004, the Federal Election Commission found that there is reason to believe your client, John Cavanagh, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

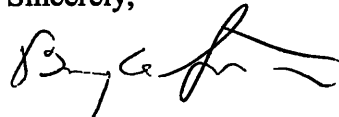
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. Also, although we have confirmed your client's representation by telephone, please have him sign and return the enclosed Designation of Counsel form as soon as possible. If you have any questions, please contact Mark Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4 MUR: 5628

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6 RESPONDENT: John Cavanagh

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9 **I. INTRODUCTION**

10 Through its counsel, AMEC Construction Management, Inc. ("AMEC") and AMEC plc
11 (AMEC's ultimate corporate parent) made a voluntary submission notifying the Commission that
12 AMEC appeared to have violated the Federal Election Campaign Act of 1971, as amended (the
13 "Act")¹ by reimbursing approximately \$17,000 of its employees' contributions to federal election
14 campaigns from at least 1998 to 2000. The submission detailed contributions to federal
15 candidates since October 1998, made by executives and reimbursed by AMEC using general
16 treasury funds.

17 AMEC, formerly known as Morse Diesel International, Inc. ("Morse Diesel"), provides
18 construction management services for large construction projects within the United States.

19 AMEC's ultimate parent company (AMEC plc) initially acquired an interest in Morse Diesel in
20 1990. AMEC plc acquired the remaining interest in Morse Diesel in 1995, and operated the
21 company under that name until it changed it to AMEC in 2001.

22 In October 2003, AMEC and AMEC's ultimate parent company (AMEC plc) revealed to
23 the Commission the existence of a program by which AMEC reimbursed certain employees for

¹ All of the facts relevant to this matter occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless specifically noted to the contrary, all references to statutes and regulations in this report pertain to those that were in effect prior to the implementation of BCRA

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1 making contributions to federal election campaigns. Beginning as early as the late 1980's, the
2 company allegedly made such reimbursements through its expense account system. Later,
3 assertedly after receiving advice from a tax advisor at the firm KPMG, AMEC made these
4 reimbursements by paying special bonuses through its payroll system. According to AMEC, its
5 then-CEO (John Cavanagh) and/or its then-CFO determined which contributions to make and
6 which employees would make them. AMEC's then-CFO allegedly instructed the selected
7 employee to make a particular political contribution and instructed an accounting department
8 supervisor to pay a "grossed up" bonus to that employee. As a result, the employee's net bonus,
9 after taxes, equaled the amount of the contribution at issue.

10 **II. ANALYSIS**

11 The Act prohibits any officer or director of any corporation from consenting to any
12 contribution or expenditure by that corporation. 2 U.S.C. § 441b(a). In addition, the Act
13 provides that "[n]o person shall make a contribution in the name of another person or knowingly
14 permit his name to be used to effect such a contribution..." 2 U.S.C. § 441f. Commission
15 regulations also prohibit persons from knowingly assisting in making contributions in the name
16 of another. 11 C.F.R. § 110.4(b)(1)(iii).

17 Based on AMEC's internal investigation, it appears that John Cavanagh (who was a CEO
18 of AMEC in the 1990s) or another employee allegedly determined which contributions to make,
19 which employees would make (and be reimbursed) for them, and admitted to receiving at least
20 one reimbursement from AMEC for contributions to federal campaigns. Mr. Cavanagh thus
21 knowingly assisted in making contributions in the name of another and permitted his name to be

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1 used to effect a contribution in the name of another. Moreover, John Cavanagh apparently
2 consented to AMEC's corporate contributions.

3 Mr. Cavanagh accepted \$4,935 in reimbursements from AMEC for political contributions
4 during the period from October 15, 1998 to December 1999. Furthermore, for the period from
5 January 1995 to October 15, 1998, Mr. Cavanagh made \$7,650 in political contributions, some of
6 which were reimbursed from AMEC.

7 The actions of John Cavanagh, who directed or actively participated in AMEC's
8 disguised corporate reimbursement scheme, appear to constitute knowing and willful conduct
9 under the Act. See 2 U.S.C. § 437g(a)(5)(B); *United States v. Hopkins*, 916 F.2d 207, 214 (5th
10 Cir. 1990) (under 18 U.S.C. § 1001, "knowing and willful" false representation proven where
11 defendant acted "deliberately and with knowledge that the representation was false"); *United*
12 *States v. Whab*, 355 F.3d 155, 162 (2d Cir. 2004) (no "plain error" in district court's jury
13 instruction that the term "willfully" requires only a criminal defendant's "aware[ness] of the
14 generally unlawful nature of his conduct").² One may draw an inference of a knowing and
15 willful act "from the defendants' elaborate scheme for disguising" their actions. *Hopkins*, 916
16 F.2d at 214-15. The *Hopkins* case involved a program of corporate reimbursements for
17 employees' political contributions. The defendants (who were officers or directors of savings
18 and loan institutions) "signed forms which indicated that employees were receiving pay raises

² By comparison, the District of Columbia Circuit has interpreted the "knowing and willful" standard to require a finding of "defiance or knowing, conscious, and deliberate flaunting [sic] of the Act." *National Right to Work Comm v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (internal citation omitted) (no "defiance" or "knowing, conscious, and deliberate flaunting" of the Act that would support "knowing and willful" violation of contribution solicitation requirements in light of "ambiguities" of statute and lack of Commission guidance).

1 because their status had changed when in fact the employees received pay raises only so that they
2 could contribute” to a political committee. *Id.* at 213.

3 In the present matter, AMEC admits that it does not have any written records of its
4 special bonuses to reimburse employees’ political contributions (except for computerized payroll
5 records that simply reflected that a bonus was paid). Moreover, AMEC has not revealed
6 whether, during the operation of its expense-based reimbursement scheme, its employees openly
7 claimed that the purposes of their expense submissions were for political contributions. AMEC’s
8 decision to move the reimbursement scheme from its expense account system to its payroll
9 system makes these reimbursements more difficult to track. The absence of written records
10 concerning its corporate reimbursements suggests not only that AMEC was aware of the
11 “generally unlawful nature” of its conduct, but that it created an “elaborate scheme for
12 disguising” its corporate political contributions. *Whab*, 355 F.3d at 162; *Hopkins*, 916 F.2d at
13 214-15. AMEC has not explained why it did not simply make corporate contributions directly to
14 various political committees, which may suggest its knowledge of the unlawful nature of its
15 conduct. AMEC’s conclusory assertion that its conduct was not “knowing and willful,” does
16 nothing to refute the inference of “knowing and willful” activity based on AMEC’s hidden
17 reimbursement scheme. *See Hopkins*, 916 F.2d at 214-15.

18 In conclusion, based on the information provided by AMEC, and other publicly available
19 information, the Commission finds reason to believe that John Cavanagh knowingly and willfully
20 violated 2 U.S.C. §§ 441b(a) and 441f.

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